

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

VICTOR TAGLE SR.,

Case No. 2:15-cv-00881-JCM-PAL

Plaintiff,

ORDER

v.

(Mots. – Dkt. ## 9, 29, 50)

CLARK COUNTY, et al.,

Defendants.

This matter is before the Court on Plaintiff Victor Tagle Sr.’s Motion for Change of Personnel and Establish Immediate Contact / Visitation (Dkt. #9); Motion for Immediate Contact / Visitation (Dkt. #29); and Motion to Include Multiple Defendants and an Increase on the Monetary Compensation due to Defendants’ Attorney Request (Dkt. #50). The Court has considered the Motions, Responses (Dkt. #34, #53), and Replies (Dkt. #42, #55).

I. PROCEDURAL BACKGROUND

Plaintiff is a prisoner proceeding in this action *pro se*. On February 13, 2015, he filed this lawsuit pursuant to 42 U.S.C. § 1983 for alleged violations of the Fourth, Fifth, and Fourteenth Amendments related to his children’s constitutional rights. *See generally* Compl. (Dkt. #1-1). According to Plaintiff, his children are wards of the state in the care of DFS.¹

¹ Pursuant to Rule 201 of the Federal Rules of Evidence, the court may take judicial notice of any fact “not subject to reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Judicial notice is properly taken of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue. *See, e.g., Bennett v. Medtronic, Inc.*, 285 F3d 801, 803 n.2 (9th Cir. 2002); *Mark v. Kuckenmeister*, 619 F3d 1010, 1014 n.1 (9th Cir. 2010). Here, the Court finds it appropriate to take judicial notice of the ongoing abuse and neglect proceedings involving Plaintiff’s children that are pending before the juvenile division of the Eighth Judicial District Court for Clark County, Nevada (the “juvenile court”). *See* Defs.’ Mot. to Dismiss (Dkt. #6), Ex A, Report for Permanency & Placement Review (submitted on April 15, 2015, in Case No. J10-321527-P1).

1 Plaintiff alleges that Defendants' negligence, ignorance, arrogance, and abuse of power are
 2 exposing his children to child endangerment, physical psychological, and sexual abuse. *Id.* at 3.
 3 In Count I, Plaintiff alleges violations of the children's Fourth Amendment rights because they
 4 allegedly "were removed from their mother's house, without reason, and/or legal court's order."
 5 *Id.* at 4. In Count II, Plaintiff alleges violations of the children's Fifth Amendment rights
 6 because the defendants allegedly subjected the children to a series of psychological or physical
 7 experiments by exposing them to psychotropic drugs. *Id.* at 5. In Count III, Plaintiff alleges
 8 violations of the children's Fourteenth Amendment rights due to alleged exposure to death as
 9 well as physical and mental injuries. *Id.* at 6. The Complaint states that Plaintiff has attempted
 10 to resolve this dispute by seeking relief from the juvenile court in multiple court hearings, all to
 11 no avail. *Id.* at 8.

12 In the Complaint's request for relief, Plaintiff seeks the immediate re-placement of his
 13 children to appropriate facilities with and prevention of the children's further exposure to
 14 physical and psychological abuse. *Id.* at 9. Plaintiff also requests: (i) immediate communication
 15 between himself and his children; (ii) investigation and punishment of Defendants; (iii) monetary
 16 compensation of \$1,000 per child for each day the children are "under DFS's jurisdiction." *Id.*

17 **II. PLAINTIFF'S MOTIONS**

18 Since Defendants removed the case to this Court, Plaintiff has filed numerous
 19 duplicative, premature, and meritless motions. The motions are mostly illegible; however, the
 20 Court will group Plaintiff's similar motions and address his requests to the extent possible.

21 **A. Motion for Change of Personnel and Establish Immediate Contact /** 22 **Visitation (Dkt. #9) and Motion for Immediate Contact / Visitation (Dkt. #29)**

23 These duplicative motions ask the Court to supervise the care of his children and replace
 24 the DFS personnel currently assigned to his children in the abuse and neglect case before the
 25 juvenile court. Federal courts are courts of limited jurisdiction. *Exxon Mobil Corp. v. Allapattah*
 26 *Servs., Inc.*, 545 U.S. 546, 552 (2005). A "federal court is presumed to lack jurisdiction in a
 27 particular case unless the contrary affirmatively appears." *Stock West, Inc. v. Confederated*
 28 *Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). NRS 128.020 provides

1 that the state district courts have jurisdiction in all cases and proceedings under NRS Chapter
 2 128, which includes abuse and neglect proceedings such as those involving Plaintiff's children in
 3 the juvenile court.² Plaintiff's motions present no legal basis to support the relief he seeks.
 4 Defendants' pending motion to dismiss raises serious questions about this court's jurisdiction in
 5 family court matters. Unless and until the district judge finds this court has jurisdiction Plaintiff's
 6 motions will be denied.

7 **B. Motion to Include Multiple Defendants and an Increase on the Monetary**
 8 **Compensation due to Defendants' Attorney Request (Dkt. #50)**

9 Plaintiff's motion provides details regarding his criminal charges and conviction for
 10 sexually abusing his step-daughter as well as the juvenile court proceedings involving his
 11 children. *See* Pl.'s Mot. (Dkt. #50) at 3–6, 10–19. Plaintiff asks the Court for multiple forms of
 12 relief such as: (1) adding multiple defendants to this case, including the State of Nevada; (2)
 13 ordering Defendants to send a \$50 check to the Nevada Department of Corrections' law library
 14 to cover Plaintiff's copying charges for 200 pages of documents; and (3) awarding Plaintiff \$1
 15 million dollars due to the "personal abuses" he has suffered; (4) the immediate release of
 16 Plaintiff from prison and his lifetime supervision. *Id.* at 7–8. None of these requests have merit.

17 First, with regard to Plaintiff's request to add multiple defendants to this case, his request
 18 is duplicative of his two pending motions to amend his Complaint. *See* (Dkt. #43, #46). The
 19 assigned district judge will consider Plaintiff's request to add defendants with those motions.

20 Second, Plaintiff provides no legal support for his request that Defendants be ordered to
 21 pay for his copying charges. The Supreme Court has held that an inmate's constitutional right of

22
 23 ² Additionally, the Supreme Court and the Ninth Circuit have repeatedly held that family relations and
 24 child custody are matters typically reserved to the state courts. *See, e.g., Moore v. Sims*, 442 U.S. 415
 25 (1979) (noting that "family relations are a traditional area of state concern"); *Peterson v. Babbitt*, 708
 26 F.2d 465, 466 (9th Cir. 1983) (finding that "domestic relations and particularly child custody problems"
 27 are generally state law matters). State courts have a special expertise and experience in child custody
 28 situations that federal courts lack. *See H.C. ex rel. Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000).
 Thus, federal courts "traditionally decline to exercise jurisdiction in domestic relations cases when the
 core issue involves the status of parent and child." *Coats v. Woods*, 819 F.2d 236, 237 (9th Cir. 1987);
see also Latta v. Otter, 779 F.3d 902, 912–13 (9th Cir. 2015) (because family law issues "are committed
 to the states, federal courts ought to refrain from intruding into this core area of state sovereignty.")
 (citation omitted).

1 access to courts does not impose “an affirmative obligation on the states to finance and support
 2 prisoner litigation.” *Lewis v. Casey*, 518 U.S. 343, 384 (1996). Likewise, nothing in the Federal
 3 Rules of Civil Procedure or Ninth Circuit case authority require defendants or the courts to
 4 finance or subsidize fees and costs associated with prosecuting a civil action. *See, e.g., Johnson*
 5 *v. Moore*, 948 F.2d 517, 521 (9th Cir. 1991); *Tedder v. Odel*, 890 F.2d 210, 211 (9th Cir. 1989).

6 Third, Plaintiff’s request for an award of \$1 million dollars is not appropriately brought
 7 by motion.

8 Fourth, this Court lacks jurisdiction to grant Plaintiff’s request for immediate release
 9 from prison and his lifetime supervision. Federal district courts do not have appellate
 10 jurisdiction over a state court, whether by direct appeal, mandamus, or otherwise. *See, e.g.,*
 11 *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). This jurisdictional principle, explained in the
 12 Supreme Court’s decision in *Heck v. Humphrey*, 512 U.S. 477 (1994), bars Plaintiff’s request. In
 13 *Heck*, the Supreme Court held that a plaintiff cannot succeed on a civil rights challenge under 42
 14 U.S.C. § 1983 that necessarily implicates the constitutionality of the plaintiff’s criminal
 15 conviction or sentence. *Id.* at 484–87. In other words, a civil rights action cannot be used to
 16 indirectly attack a criminal conviction, unless the conviction or sentence is first invalidated. *Id.*
 17 *See also Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996) (a plaintiff “may challenge the
 18 validity of his arrest, prosecution, and conviction *only by writ of habeas corpus*”) (emphasis
 19 added). There is no question that *Heck* bars Plaintiff’s request; therefore, it is denied.³

20 Finally, the court again warns Plaintiff that continuing to file multiple motions requesting
 21 the same relief, motions not authorized by the Federal Rules of Civil Procedure or any authority
 22 only delays the court’s ability to address this case on the merits. Requests for this court’s
 23 intervention in pending family court or juvenile court proceedings will not be considered unless


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 25 ³ The Court notes that Plaintiff’s request for relief and the allegations regarding his conviction are
 26 duplicative of those he put forth in another recent case in this district. *See Tagle v. State of Nevada*, 3:15-
 27 cv-00445-MMD-WGC. In a Report of Findings and Recommendation (Dkt. #3) to District Judge
 28 Miranda M. Du in that case, Magistrate Judge William G. Cobb informed Plaintiff that he could not
 challenge his arrest and subsequent incarceration unless he first succeeds in invalidating his conviction.
 Judge Du recently held that she will adopt Judge Cobb’s recommendation and dismiss the case if Plaintiff
 fails to withdraw his Application to Proceed *In Forma Pauperis* before November 9, 2015. *See Order*
(Dkt. #6).

1 and until the district judge finds this court has jurisdiction. Plaintiff is again warned that he may
2 be sanctioned for filing frivolous or duplicate motions asking for the same relief.

3 **IT IS ORDERED:**

- 4 1. Plaintiff Victor Tagle Sr.'s Motion for Change of Personnel and Establish Immediate
5 Contact/Visitation (Dkt. #9); Motion for Immediate Contact/Visitation (Dkt. #29);
6 and Motion to Include Multiple Defendants and an Increase on the Monetary
7 Compensation due to Defendants' Attorney Request (Dkt. #50) are DENIED.

8 Dated this 30th day of October, 2015.

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10 PEGGY A. LEEN
11 UNITED STATES MAGISTRATE JUDGE
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